

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ MAY 05 2006 ★

ANITA BALL

Plaintiff,

v.

JAMES BRIGHT, M.D., et al. and
DR. JAMES BRIGHT,

Defendants.

BROOKLYN OFFICE

05 CV 5644 (gaw)
Case No. ~~05-5140-CV-SW-JCE~~

~~State Court Case No. 05LW-CC00050-~~

MOTION TO DISMISS AND SUGGESTIONS IN SUPPORT

COMES NOW, James Bright, M.D. by and through counsel and for his Motion to Dismiss and Suggestions in Support states the following:

1. On August 26, 2005, the Plaintiff, through her attorney, filed her Petition in the Circuit Court of Lawrence County, Missouri, naming as Co-Defendant, James Bright, M.D.
2. On September 26, 2005, Defendant, through his attorney, timely filed Defendant's Answer to the Plaintiff's Petition.
3. On October 11, 2005, Defendant Eli Lilly, through their counsel, filed Notice of Removal of Civil Action to the United States District Court for the Western District of Missouri, Southwestern Division.
4. Prior to October 11, 2005, Plaintiff, through her counsel, agreed to voluntarily dismiss without prejudice Defendant, James Bright, M.D., and executed the same on October 13, 2005 (see attached exhibit A).

Defendant James Bright, M.D. dismissed on
consent. So ordered.
4/11/06

5. On October 17, 2005, Plaintiff, through her counsel, filed the executed voluntary dismissal without prejudice in the Circuit Court of Lawrence County, Missouri and notice was served on all parties of record.

6. Plaintiff has executed a voluntary dismissal without prejudice that was filed in the Circuit Court of Lawrence County, Missouri after notice for removal of this matter to federal jurisdiction had been filed and for that reason the Court would not grant to order of dismissal. As there still exists the voluntary dismissal by the Plaintiff, Anita Ball, dismissing without prejudice her claims against the Defendant, James Bright, M.D., there exists no claim currently before this Court upon which relief can be granted.

7. The Court should dismiss the matter against Defendant, James Bright, M.D., as it is clear that the Plaintiff has abandoned the claim.

WHEREFORE, the Defendant, based upon the facts presented, prays this Court to grant his Motion to Dismiss and grant such other and further relief as the Court finds is just and proper.

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Certificate of Service

I hereby certify that on November 2, 2005 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Todd S. Hageman
Mr. John F. Kuckelman
Andrew Bruce See

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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/s/ Brian D. Malkmus

EXHIBIT A

IN THE CIRCUIT COURT OF LAWRENCE COUNTY
STATE OF MISSOURI

ANITA GAIL BALL,
Plaintiff,

v.

ELI LILY CO., INC., ET AL

Defendants

Cause No. 05LW-CC00050-D1

Division No. 1

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW Plaintiff, Anita Gail Ball, by and hereby voluntarily dismisses Dr. James Bright, WITHOUT PREJEUDICE, in the above captioned case.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court enter an order of Voluntary Dismissal Without Prejudice for her action against Defendant, Dr. James Bright, only, and without prejudice.

Respectfully submitted,

By:

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